



Right to Universal Mobility: A Consequentialist Cosmopolitan Reading

By/Par

Raffaele MARCHETTI

European University Institute

raffaele.marchetti@iue.it

INTRODUCTION

Migration and the policy of admission of aliens into political communities is increasingly recognised as a key issue of both political agendas and academic debates. As a political issue, migration is at the centre of a controversy where the proponents of more open policies argue against tight border controls on grounds that are often composed of multiple components. Economic theses are frequently mixed with cultural, political, legal, or security arguments. Pragmatic approaches are often entangled with ideological stances, idealistic attitudes, or racist positions. All of this contributes to create a burning situation that not only heats political debates but sometimes also descends to the streets. As a theoretical issue, migration is equally controversial for it intersects a core node of political theory, namely the notion of citizenship. According to liberalism, individuals are entitled to a set of rights including the right to mobility, and yet this right is constrained by an equally recognised right to collective self-determination and national autonomy. This tension is more and more problematic in a world in which individual human rights are on the rise and state sovereignty is in decline in many respects – except for the issue of immigration.

In response to these disputes, this straight-to-the-point essay offers a consequentialist cosmopolitan reading of the right to universal mobility that intends to avoid the risk of arbitrary or asymmetric positions. It argues that migrants' rights to freedom of movement have to be considered as a *prima facie* cosmopolitan right, a right that ought to be politically recognised and that contributes to individual well-being and subsequently to world welfare. However, the paper also maintains that such right has to be balanced against a *prima facie* equally valid right of original residents to preserve their societal political project, for this contributes to individual well-being and subsequently to world social welfare, too. Deploying similar reasons, both migrants' and residents' claims then ultimately derive their

legitimacy from a *single* principle of *global* justice, that of maximising social welfare by guaranteeing freedom of choice on different political levels. Hence, a fair political system ought to symmetrically balance these two contrasting claims by appealing to their common principle of justice.

FREEDOM OF CHOICE AND THE VALUE OF CITIZENSHIP

Liberalism is centered on the primacy of individual freedom of choice, in that the cardinal value that political arrangements have to pursue is individual liberty. In this paper, I present a consequentialist and welfarist understanding of freedom of choice according to which each individual is entitled to achieve and develop the status of independent choice-maker¹. Since the individual capacity for choice between different life options is considered the most viable indicator of well-being, individual rights are deemed to be the most reliable instrument to achieve the greatest social welfare. In order to guarantee each individual his or her personal capability to choose freely and thus to pursue his or her own well-being, a number of specific social and political reforms need to be envisaged. Here I will concentrate on those reforms that touch freedom of choice as applied to the case of political participation in the public decision-making processes at each level of political action. These rights are intended as multilayered prerogatives to be granted to each citizen.

Migration is here examined with reference to the political dimension of movement concerning the issue of admission into a foreign political society, thus of acquisition of citizenship. Within this context, citizenship is understood as a set of legal entitlements allowing for freedom of choice and full membership of the political community. This set is based on a fundamental principle of equality and reciprocity, and is impartially guaranteed to every member of the polity. Insofar as for members of the collective exercising self-governance is usually recognised as the minimal precondition for democratic life, the acquisition of this set of rights is considered crucial to effective participation in social and political life². When migrants are deprived of citizenship rights they are *de jure* excluded from the political community and suffer a subaltern status.

In order to grasp the meaning of the current proposal, it is fundamental to notice that current international customary law grants to the state an absolute right to refuse admission into its citizenry and territory. Provided no relevant conventions or humanitarian measures are

¹ For more on the normative foundation of this position refer to Raffaele Marchetti, "Consequentialist Cosmopolitanism and Global Political Agency," in *Global Ethics and Civil Society*, in J. Eade and D. O'Byrne, (eds.) (Aldershot: Ashgate, 2005), pp. 57-73.

² Gerard Delanty, *Citizenship in a Global Age: Society, Culture, Politics* (Philadelphia, PA: Open University Press, 2000), § 1-2; Will Kymlicka and Wayne Norman, "A Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics*, 104 (1994), pp. 352-81.

applicable³, the refusal to admit aliens is never an illicit act. However, such a statist position is increasingly under pressure both from a normative point of view for its inconsistency with fundamental principles of impartiality and as a matter of fact given that increasing numbers of states recognise the possibility of double or even multiple citizenship⁴. One way of re-interpreting the tension between universal and national claims concerning the issue of immigration consists in progressively imposing limits on state sovereignty according to international or intergovernmental laws. Usually this interpretation implies considering migrants as aliens, or non-citizens and non-subjects, the state being accepted as the only agent entitled to confer such privileged status. This approach typically corresponds to the image of concentric circles, with a small social group (or even the family) constituting the smallest of these circles. Subsequently, progressive enlargements are envisaged. In diametrical opposition to such an exclusionary mechanism, this paper advocates an approach that is cosmopolitan and all-inclusive from the beginning⁵. Migrants are not non-citizens with only narrowly circumscribed rights; but they are cosmopolitan citizens entitled, as much as 'permanent' residents are, to participate in the decision-making processes world-wide which extend to different spheres of political action. In other words, individuals come first whereas states remain political devices for the promotion of social welfare. In order to unfold such a position it is, however, necessary to examine more carefully the ground on which both residents' and migrants' claims are traditionally based, namely the issue of citizenship.

LEGITIMACY OF RESIDENTS' CLAIMS

The claims of citizens to control entrance into their national territory are based on the principle of self-determination. According to this principle, a group is entitled to collectively decide over its destiny, including its membership. This reasoning constitutes an extension of the individual right to freedom of choice to the collective domain. Such group prerogatives usually rely on a liberal-communitarian argument holding that a political project is necessary for imbuing individual lives with meaning and that a genuine political project can only be carried out in the vernacular, i.e. at the local/state level.

From the perspective of this paper, the liberal-communitarian argument only has derivative force. It is warranted provided it is conducive to social well-being. Genuine communitarian scholars, however, do not deploy such an instrumental reading. If a strict, non-instrumental communitarian perspective is maintained, then the state-centric point of view should be rejected for at least two reasons, which in different ways concern the principle of non-

³ It has to be noticed that a number of international conventions impose limits on state sovereignty, according to the principle of non-discrimination. Yet, only very rarely do they comment on issues of admission, except in the case of reunion of minors to parents and refugees.

⁴ Saskia Sassen, "Beyond Sovereignty: De-facto Transnationalism in Immigration Policy," *European Journal of Migration Law*, 1, no. 2 (1999), pp. 177-98.

⁵ Raffaele Marchetti, "Interaction-Dependent Justice and the Problem of International Exclusion," *Constellations*, 12, no. 4 (2005), pp. 487-501.

discrimination. Firstly, by conceding an almost absolute privilege to original residents, state-centric policies do not recognise the supervenience of the principle of impartial consideration of each individual right on equal opportunity of choice. Secondly, the nationalist orientation should be rejected for the way it intentionally discriminates among would-be migrants, admitting only those who satisfy entry requirements shaped to the needs of the receiving countries. Both reasons ultimately affect the guarantee of individual freedom of choice and thus the overall promotion of social well-being.

LEGITIMACY OF MIGRANTS' CLAIMS

Similarly to the case of resident citizens, migrants' claims are fundamentally based on the recognition of universal rights. Freedom of movement is usually included in the set of fundamental individual rights that are crucial for human dignity and for full participation in the political life of a community. Traditionally applied to the domestic domain only, the value of universal mobility is mostly evident when it is denied. An important criticism of dictatorial regimes concerns, in fact, their restrictive attitude toward mobility within and beyond national territory. As much as other domains of freedom of choice, freedom of movement remains a key component for the enhancement of individual, and thus of social well-being.

From the perspective of this paper, this liberal-universalist reading of the right to mobility also only has derivative force, i.e. it is warranted provided it is conducive to social well-being. Genuine 'open-borders' scholars, however, do not deploy such instrumental reading. If a strict, non-instrumental universalist perspective is maintained, the radical alternative of open borders should be refused for a number of distinct reasons related to the impartial dealing with both migrants and receiving populations. Note that these reasons are of a hypothetical nature, for they invoke possible but not empirically provable scenarios associated with the sudden fall of borders. Concerning migrants, the policy of completely open borders here and now could be self-defeating, in so far as it could subvert the expectations of would-be migrants themselves who expect to arrive into a specific country with distinct socio-economical characteristics. As for local residents, a similar line of argument applies, for their expectations should also be taken into account and with equal weight. Were borders suddenly and completely open, a possible result could be a substantial re-shaping of social identity and of the entire state structure, with potentially huge social costs in terms of well-being.

MIGRATORY COSMOPOLITANISM

It is now time to re-construct a legitimate normative framework to deal with the migration issue from a global perspective. The task here consists in investigating which institutional setting would best serve the promotion of freedom on a global level. Since institutions serve

to ultimately promote social welfare via individual freedom of choice, alternative institutional schemes should be assessed in terms of the access they accord individuals to the status of free choice-makers. Consequently, different rights-related claims have to be re-assessed from this global and all-inclusive perspective.

With regards to the political reading of migration, the starting point of the cosmopolitan argument on the movement of people stems from a prescriptive observation. Cosmopolitanism affirms that the scope of justice should be universal as no discrimination is justified when considering the ultimate rights of every citizen to control his destiny, i.e. to equal individual self-determination. In this vein, individual freedom of choice and subsequent political entitlements to take part in the public decision-making process at all political levels form the normative core of the cosmopolitan criteria to assess international affairs. Underpinning this is the fundamental ethical postulate regarding impartiality that demands the extension of the application of the norm regarding individual non-discrimination to the global level⁶. In fact, in order to preserve his/her individual autonomy via freedom of choice, the agent needs to extend his political entitlements to the totality of the sphere of political action⁷. Individuals need to have a political voice in different spheres of political action (beyond those traditionally limited by the national territory) to have their freedom of choice best preserved. In order to comply with the requirements of global justice, such an extension of rights needs to be balanced, on an equal footing, against the political entitlements of other social actors.

These considerations lead us to question the mainstream framework, which considers migration only a national issue and gives priority to residents' claims. According to cosmopolitanism, this move constitutes a prejudicial limitation of the original question that inevitably delivers a distorted and biased answer, in which the migrant remains on an unequal standing. As an alternative to this, a radical repositioning of the receiving countries is developed and an equalising balance is struck between migrants and residents. This change of perspective calls for an equal status of cosmopolitan citizenship for migrants and resident citizens. Moreover, we can derive a right to free passage with regard to the movement of people.

A cosmopolitan citizenship characterised by these rights becomes *de facto* a crucial institutional factor for individuals to increase (but sometimes even simply to exercise) their autonomy to choose differing life options, and their capability to govern the socio-political domain by changing their place of residence. Much as at the domestic level the right to movement within the national territory has proved crucial in the self-realisation of one's

⁶ Robert Goodin, "If People Were Money..." in *Free Movement. Ethical Issues in the Transnational Migration of People and of Money.*, in B. Barry and R. Goodin, (eds.) (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 6-22; Peter Singer and Renata Singer, "The Ethics of Refugees Policy," in *Open borders? Closed societies?: the Ethical and Political Issues*, in M. Gibney, (eds.) (New York: Greenwood, 1988), pp. 111-30.

⁷ Raffaele Marchetti, "Human Rights as Global Participatory Entitlements," in *Between Cosmopolitan Ideals and State Sovereignty. Studies on Global Justice*, in R. Tinnevelt and G. Verschraegen, (eds.) (London: Palgrave, 2006), pp. 159-69.

personal projects and political participation, an equivalent international right would be equally beneficial to the well-being of the individual in terms of choice opportunities and political control of one's own life⁸.

Nonetheless, for this to satisfy the global democratic requirements concerning multilevel dimensionality, an impartial weighting mechanism between the claims of migrants and those of local citizens has to be simultaneously envisaged. Having argued for a universal right to movement, it is here necessary to point out again that such a right has to be inserted into a wider institutional political framework, in which other kinds of rights also have legitimate claims. While migrants and residents are equal on the basis of a fundamental right to the protection of freedom of choice, they nonetheless differ in that the social value of their relative institutional entitlements concerning national citizenship can become unbalanced. National prerogatives can at times create a sub-optimal result in terms of social welfare if they are not properly weighed with the political entitlements of non-nationals. This case is similar in many respects to the familiar situation of welfare state provision, in which a set of secondary rights of one group conflicts with secondary entitlements of another group, despite both counterparts having fundamentally equal claims to well-being. In cases like this, some sort of impartial comparative assessment made by a public, *all-inclusive* institution is needed in order to solve the controversy. Similarly at the global level, an all-inclusive institution has to be envisaged in order to provide a legitimate resolution mechanism to solve the conflicts between residents and migrants. Ultimately, this implies endorsing the regulation of migration by some supra-national institution engaged in weighing the costs and benefits of the movement of people on their freedom of choice and therefore on the overall social welfare. Explorations of the institutional details and the feasibility of a world migratory regime that allows for such a public assessment form part of the current debate on international migratory management.

⁸ R. Nett, "The Civil Rights We Are Not Ready For: The Right of Free Movement on the Face of the Earth," *Ethics*, 81 (1971), pp. 212-27.